No. 473

In the Supreme Court of the United States

OCTOBER TERM, 1948

UNITED STATES OF AMERICA, PETITIONER

v.

RICHARD P. BUTLER

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 473

UNITED STATES OF AMERICA, PETITIONER

v.

REGINALD P. WITTEK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

On pages 12 and 13 of the Government's petition for a writ of certiorari filed in this case, it is pointed out that section 10 of the District of Columbia Emergency Rent Act gives a tenant the right to recover by judicial proceedings double the amount of excess rent, plus attorneys' fees and costs, and that the decision of the Court of Appeals in this

case may subject the United States to suits for double the amount of rent increases collected since 1941—a potential liability which has been estimated as more than $400,000.

In this connection the attention of the Court is invited to an opinion by Judge Myers of the Municipal Court for the District of Columbia, dated January 25, 1949, in the case of *United States of America* v. *Morris Kalstein, et al.*, No. L. & T. 242-947. In that case the United States sued the defendants to recover possession of premises for non-payment of rent. Defendants counterclaimed for double the amount of rental increases collected, plus attorneys' fees and costs, relying on the District of Columbia Emergency Rent Act. The Government moved to dismiss on the ground that no consent to such suit had been given by the United States. The Municipal Court, in overruling the motion to dismiss, held that the United States is subject to all the penalties to which any other landlord is subjected by the Rent Act. This holding was based on the decision of the Court of Appeals in the *Wittek* case. The opinion in the *Kalstein* case appears as an appendix to this memorandum.

The *Kalstein* case is but the first of a number of such suits which it may be anticipated will be filed against the Government, and it emphasizes the importance of the question presented in the *Wittek* case.

PHILIP B. PERLMAN,
Solicitor General.

FEBRUARY, 1949.

APPENDIX

IN THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA

Landlord and Tenant Branch

No. L & T 242-947

UNITED STATES OF AMERICA, PLAINTIFF

v.

MORRIS KALSTEIN, ET AL., DEFENDANTS

MEMORANDUM OPINION

This matter came on for hearing on a motion by the plaintiff United States of America to dismiss a counterclaim filed by the defendants on the ground that the Municipal Court for the District of Columbia has no jurisdiction to determine such counterclaim as this would amount to entertaining a suit against the United States for which no statutory authority exists consenting to such suit.

The original complaint was filed by the United States of America against the defendants Mr. and Mrs. Kalstein to obtain possession of premises No. 717 46th Street Southeast in the District of Columbia on the grounds that defendants were in arrears of rent in the amount of $284.00 covering the period from June, 1948, to January 1, 1949 at the rate of $44.00 per month. Defendants in their counter-

claim contend that the plaintiff rented the premises to them on September 16th, 1943, at the rate of $26.00 per month which became and continued to be the maximum rent ceiling but that for the period from August 1, 1946 to February 1, 1948, the plaintiff demanded and received rent at the monthly rate of $33.00 and starting March 1, 1948, at the rate of $44.00 per month, and that therefore there is an overcharge in violation of the D. C. Emergency Rent Act of $612.00.

The sole question presented by the motion is whether or not the plaintiff United States of America, having been held to be a "landlord" under the District of Columbia Emergency Rent Act by the United States Court of Appeals for the District of Columbia in "Wittek *v.* U. S. A." decided September 27, 1948 (Case No. 9646)—F. (2d)—is excluded from being subject to the enforcement penalties prescribed by Section 10(a) of the Act which provides—

> "If *any landlord* receives rent * * * in violation of any provision of this Act, or of any regulation or order thereunder prescribing a rent ceiling * * *, the tenant paying such rent * * * may bring in case of a violation of a maximum rent-ceiling, an action for double the amount by which the rent exceeded the applicable rent ceiling * * * plus reasonable attorneys' fees and costs as determined by the Court."

There is no doubt that the Municipal Court for the District of Columbia has exclusive jurisdiction of all suits under the District of Columbia Emer-

gency Rent Act. (Title 45, Sect. 1610, D. C. Code.) Consideration has been given to the Tucker Act (28 U. S. C. Sec. 41 (20)) which gave jurisdiction to the United States District Court over all claims, counterclaims, etc., against the United States up to $10,000.00 concurrent with the jurisdiction heretofore exclusively conferred on the Court of Claims. The Court, however, feels that the later enactment of the D. C. Rent Act gave jurisdiction in this case to the Municipal Court.

A careful reading of the opinion of the court in the Wittek Case *supra* fails to reveal any statement that the United States would be subject only to certain provisions of the Rent Act and would be exempt from the provisions setting forth enforcement penalties and procedure. The court of appeals used this language—

> "* * * The cause and the objective of the Rent Act are too well known to merit extensive elaboration. The impact of the defense program, with its concentration of workers in certain areas, created a housing shortage which threatened to throw rents into an upward spiral, with consequent effects upon the cost of living and an impulse towards inflation. Congress acted in rigid and unmistakable fashion. It froze rents as of a fixed pre-war date. It defined "landlord" and "person" in broad terms. * * * Its purpose was to prevent practices tending to increase the cost of living. Deviations from its rigid fixations were permitted only upon proof of 'peculiar circumstances' * * *

> * * * Interpreting "person" in this statute in accordance with that purpose, as the rules of construction say we should, we think it includes any and every landlord, even the United States. Raising the rents of Government housing is just as much an increase in the cost of living as raising the rents on any other housing project. This is a matter of public interest and not a matter of landlords' rights, sovereign or otherwise. * * *
>
> * * * We cannot refrain from commenting upon the curious spectacle of one agency of the Government * * * asserting a right to violate a principle so insistently and emphatically proclaimed by the rest of the Government as essential to the public welfare * * *"

In the Wittek Case, the controversy arose as a result of the tenant's refusal to pay an increase in monthly rent from $38.20 to $43.00. In the present case, the United States, the tenants allege, went ahead and raised the rents to amounts in excess of the maximum ceilings set by the Rent Act and collected such excess rent from them.

Can it be argued that the United States can violate the Rent Act as a "landlord" by collecting rent in excess of the maximum ceiling thereunder and yet not be subject to the penalties for such violation of the Statute? In other words, although the United States as "landlord" can evict tenants and collect rents under the Rent Act, yet as the same "landlord" it is not subject to the penalties for violation of the same statute.

Having elected to enter the competitive housing field as a "landlord", and not having been specif-

ically exempted by Congress from accountability for violation of the D. C. Rent Act, it seems wholly consistent to apply all provisions of the housing statute to the United States as to any other landlord.

There is nothing in the language of the Rent Act read in the light of the decision of the court in the Wittek Case that gives the United States as "landlord" any such exclusion from the application of the penalties where indicated for any other landlord under the same circumstances.

The Municipal Court of Appeals has handed down a recent opinion in the case of Dunning v. Hagner & Co., (No. 724) decided January 7, 1949, in which it has held that Section 10 must be read in connection with Section 5 which provides "It shall be unlawful * * * for *any person* to demand or receive any rent in excess of the maximum ceiling." The same case holds that the action under Section 10 is "to recover a statutory obligation arising from an unlawful act."

As the United States Court of Appeals has already held that a "person" includes "any and every landlord, even the United States," it is the opinion of this Court that in its capacity as "landlord" in this case, the United States must answer and defend any counterclaim filed to recover a statutory obligation for an unlawful act.

Accordingly the motion to dismiss the counterclaim is overruled.

JANUARY 25, 1949.

FRANK H. MYERS,
Judge.

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